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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DMITRI VALLERVEICH TATARINOV,

Petitioner,

v.

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SAN DIEGO;
OFFICE OF THE CHIEF COUNSEL, DEPT. OF
HOMELAND SECURITY; U.S. ATTORNEY,
SOUTHERN DISTRICT; ICE DETENTION &
REMOVAL UNIT,**

Respondent.

07cv2033-L (NLS)

**OPPOSITION TO MOTION
FOR STAY OF REMOVAL
DURING PENDENCY OF
HABEAS CORPUS
PROCEEDINGS**

NO HEARING REQUIRED

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Edmund G. Brown Jr., Attorney General of the State of California, and Sabrina Y. Lane-Erwin, Deputy Attorney General, opposes Petitioner's Motion for Stay of Removal During Pendency of Application for Writ of Habeas Corpus, pursuant to this Court's Order dated November 27, 2007. Petitioner predicates his Motion for Stay on the potential success of the pending First Amended Petition. (See Memorandum of Points and Authorities in Support of Motion for Stay of Removal at 4-5.) The stay is not warranted because the First Amended Petition must be dismissed.

1 The
 2 undersigned is concurrently filing a Motion to Dismiss the First Amended Petition for the following
 3 reasons: Petitioner does not and cannot satisfy the custody requirement for federal habeas corpus
 4 jurisdiction; the First Amended Petition is successive; and he failed to file his First Amended
 5 Petition for Writ of Habeas Corpus within the one-year statute of limitations set forth in 28 U.S.C.
 6 § 2244(d). While Petitioner may still have valid legal options to pursue, federal habeas corpus
 7 review of the subject state court judgments is not one of them. Thus, this Court should deny
 8 Petitioner's request for a stay of the removal proceedings.^{1/}

9 In Abbassi v. Immigration and Naturalization Service, 143 F.3d 513, 514 (9th Cir. 1008),
 10 the court articulated the standard for obtaining a stay of removal. The "[p]etitioner must show either
 11 a probability of success on the merits and the possibility of irreparable injury, or that serious legal
 12 questions are raised and the balance of hardships tips sharply in petitioner's favor." See also
 13 Mariscal-Sandoval v. Ashcroft, 370 F.3d 851, 857-859. Here, Petitioner points to the probable merit
 14 of his pending First Amended Petition as the basis for his stay request. (Memorandum of Points and
 15 Authorities in Support of Petitioner's Motion for Stay of Removal at 4-5.) But Petitioner cannot
 16 show that the First Amended Petition has a "probability of success" or that it raises "serious legal
 17 questions." As argued more fully in the Motion to Dismiss the First Amended Petition, the First
 18 Amended Petition must be dismissed for several reasons. Petitioner cannot satisfy the custody
 19 requirement for federal habeas corpus jurisdiction because he was long ago discharged from state
 20 imprisonment and any probation or parole period. Though Petitioner is in ICE custody, it does not
 21 satisfy the custody requirement for federal habeas corpus review. In addition, the First Amended
 22 Petition is a successive petition and Petitioner did not obtain approval from the Ninth Circuit to file
 23 a successive petition. Moreover, Petitioner seeks collateral review of two state court judgments
 24

25 1. The undersigned understands that the California Attorney General does not represent any
 26 party to this action, and that Samuel Bettwy, as counsel for the federal respondents named in this
 27 action, is likely best suited to advocate the People's position with respect to the deportation
 28 proceedings. Thus, the undersigned files this Opposition solely in response to the Court's Order
 dated November 27, 2007, and to point out the apparent dependence of the stay request on the
 pending First Amended Petition.

1 under 28 U.S.C. section 2241, which is not the proper avenue for federal habeas corpus review.
2 Finally, the First Amended Petition was filed many years after the applicable one-year statute of
3 limitations expired. Accordingly, for all of these reasons, the First Amended Petition should be
4 dismissed with prejudice. To the extent a stay of the removal proceedings depends on the First
5 Amended Petition, dismissal of that petition would dissolve the underlying basis for the stay. See
6 Marisol-Sandoval, 370 F.3d at 859-860.

7 **CONCLUSION**

8 For the foregoing reasons, Respondent respectfully submits that Motion for Stay of
9 Removal be denied because the First Amended Petition, which is the basis for the stay, must be
10 dismissed with prejudice.

11 Dated: December 3, 2007

12 Respectfully submitted,

13 EDMUND G. BROWN JR.
Attorney General of the State of California

14 DANE R. GILLETTE
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15 GARY W. SCHONS
Senior Assistant Attorney General

16 KEVIN VIENNA
Supervising Deputy Attorney General

17 s/ Sabrina Y. Lane-Erwin
18 SABRINA Y. LANE-ERWIN
19 Deputy Attorney General
20 Attorneys for Respondent

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Tatarinov v. Superior Court of the State of California, County of San Diego; Office of the Chief Counsel, Dept. of Homeland Security; U.S. Attorney, Southern District; ICE Detention & Removal Unit**

No.: **07cv 2033-L (NLS)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

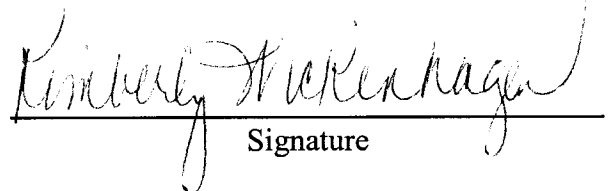
On December 3, 2007, I served the attached **opposition to motion for stay or removal during pendency of habeas corpus proceedings** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West "A" Street, Suite 1100, San Diego, California 92101, addressed as follows:

**Patricia Lynn Jacks
5790 Friars Rd. F8
San Diego CA 92110**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 3, 2007, at San Diego, California.

Kimberly Wickenhagen

Declarant


Signature